

(2002) 08 AHC CK 0114

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19695 of 2001

Gandhi Ashram Khadi Bhandar

APPELLANT

Vs

Brij Nandan Prasad & Anr.

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (2002) 08 AHC CK 0114

Hon'ble Judges : M.A.Khan, J

Final Decision : Dismissed

Judgement

M.A. Khan, J.—Sri Gandhi Ashram Khadi Bhandar, Allahabad by way of this petition has prayed for quashing the judgment and order dated 1152001 passed in Rent Control Appeal No. 92 of 2000 and the order dated 2052000 passed by the Prescribed Authority in P.A. Case No. 41 of 1995.

2. The brief facts of the case are that Sri Brij Nandan Prasad, Respondent No. 1 had moved an application under Section 21(1)(a) of the U.P. Act No. XIII of 1972 against the petitioner for release of the property on the ground that the originally property in question belongs to the mother of the Respondent No. 1 and after her death the Respondent No. 1 and his brother Harihar Prasad became the owners of the said building by mutual family settlement dated 1081994, the house in question came to the share of the Respondent No. 1, Brij Nandan Prasad and Sri Gandhi Ashram had been the tenant of this property on a monthly rent of Rs. 300 per month since, 1952. At that time Brij Nandan Prasad Respondent No. 1 was a minor and was not married. Accordingly, he was not in need of the shop in question. The Respondent No. 1 was married in the year 1955 and now his family consists of his wife, five sons and two daughters of age group of 24 to 35 years. One of his married sons Rajeev Kumar sustained serious injuries resulting in the loss of his voice and is also unable to move and is thus the aforesaid son Rajiv Kumar is the liability on the landlord. The second and third sons of the landlord are also married and other remaining two sons had

been studying and are likely to join the business one of the sons, namely ; Praveen Kumar had done Computer course. The case of Brij Nandan Prasad is that he has got himself enrolled as an Advocate and his source of income had been meagre and not sufficient enough to meet his liability. The income of hotel is not sufficient for his third son and his family while other sons had nothing to do with the said business. The landlord, therefore, prayed that the need in respect of the premises in question is genuine and bona fide and, therefore, prayed that the property in question be released in his favour. The application for release of the shop was contested by the petitioner who filed objections on the release application and denied the assertion of bona fide need of the landlord. However, the relationship as tenant with the landlord is not very seriously denied. It has been pleaded that Brij Nandan Prasad had been the Advocate and it is also wrong to say that his sons are unemployed. The landlord has a very big hotel which always remain crowded with customers and the landlord has a very good income for himself and his family members. It has further been pleaded that the petitioner Sri Gandhi Ashram is a registered Charitable institution and was doing business for the benefit of general public and acquired goodwill and reputation of its business. It has further been pleaded that the provision of U.P. Act No. XIII of 1972 are not applicable to the building in question.

3. Both the parties adduced the evidence before the learned Prescribed Authority and after appraisal of the same learned Prescribed Authority came to the conclusion that the need of the landlord in respect of the property in question is genuine and bona fide. The comparative hardship of two sides were also discussed and considered by the learned Prescribed Authority and found that the landlord shall suffer huge loss in case property in question is not released in his favour. Accordingly, the release application moved under Section 21(1)(a) of the U.P. Act No. XIII of 1972 was allowed vide judgment and order dated 2052000. Feeling aggrieved by the said judgment and order Sri Gandhi Ashram, filed an appeal being Rent Control Appeal No. 92 of 2000 and the same was also dismissed vide dated 1152001 passed by the learned Additional District Judge, Allahabad and for quashing of the two judgments and orders, the present petition has been filed.

4. I have heard the learned Counsel for the parties at length and I have gone through the record.

5. The first point that has been raised before me by the learned Counsel for the petitioner is that the provision of U.P. Act No. XIII of 1972 are not applicable to the building in question as Gandhi Ashram, the petitioner is a public Charitable character and it is a public religious institution and therefore, exempted by virtue of Section 2(bb) of U.P. Act No. XIII of 1972. The section lays down that nothing in this Act shall apply to the following namely :

?2. Exemption from operation of Act. (1) Nothing in this Act shall apply to the following namely :

(a) any building of which the Government or a local authority or a public sector corporation ; or a Cantonment Board is the landlord ; or

(b) any building belonging to or vested in a recognized educational institution ; or

(bb) any building belonging to or vested in a public charitable or public religious institution.

(bbb) any building belonging to or vested in a waqf alalaulad;?

6. I have heard this submission of the learned Counsel for the petitioner and I find no force in it. Section 2(a), (b), (bb) and (bbb) of the U.P. Act No. XIII of 1972 gives details of the building to which the provisions of U.P. Act No. XIII of 1972 is not applicable. It covers certain buildings. Firstly, a building of which, the Government or a local authority or a public sector, Corporation or Cantonment Board is the owner or landlord is exempted from the provisions of U.P. Act No. XIII of 1972. Secondly, any building belonging to or vested in a recognized educational institution is also exempted. Thirdly, any building belonging to or vested in a public charitable or public religious institution is also exempted. Fourthly, any building belonging to or vested in a Waqf including a Waqfalalaulad is also exempted.

Thus the exemption has been granted to the buildings as mentioned in Section 2(1), (a), (b), (bb) and (bbb) of the Act.

7. Here in the present case, it may be said that Gandhi Ashram the petitioner in the case is a public charitable or public religious institution. However, the building aforesaid is not owned by the petitioner and the petitioner Gandhi Ashram is not the landlord of the building in question.

8. In fact the Gandhi Ashram, is the tenant of the disputed accommodation and therefore, the exemption is not to the tenant but to the building.

9. In the case of Com. K.K. Gulati and others v. Shalini Memorial Society and School and others, 1991 (1) Allahabad Rent Cases 418, it has been held that where a property is let out on rent to a Society or an Educational Institutions it does not vest in it or belongs to it and the lease does not create any right. It is simply, a transfer of a right to enjoy such property for a certain time, express or implied. Section 2(1)(b) does not exempt in this respect from the operation of the Act.

10. Thus, the right of a tenant in demised premises is limited one. Section 105 of the Transfer of Property Act provides that a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied. It does not create any right in the property itself.

11. In case of Ganesh Inter College, Etah v. Smt. Surekha Jain, 1985 (2) ARC 24, the Court interpreting Section 2(1)(b) held that if the property is taken on rent by a society or an educational institution, it does not vest in it or belongs to it. The building under the tenancy of such tenant shall not be treated as

exempted under the said provision.

12. Here in the present case the petitioner Gandhi Ashram is not the owner of the property in question. It is simply a tenant and thus it has right to enjoy property in question for a certain time and the building in question belongs to the Respondent No. 1 landlord and is not at all exempted according to the provisions of Section 2 of the U.P. Act No. XIII of 1972. Thus the argument of the learned Counsel for the petitioner is not acceptable that the building in question which is in occupation of a public charitable institution is exempted under the U.P. Act No. XIII of 1972.

13. The next point that has been argued before me by the learned Counsel for the petitioner is that the two Courts below have erred in following the release application and the landlord Brij Nandan Prasad is not only an Advocate earning out of that profession, but he also runs a Hotel business and his sons are already settled and therefore, it cannot be said that the need for the respondent landlord in respect of the property in question is genuine or bona fide. It has also been argued by the learned Counsel for the petitioner that Gandhi Ashram, had been doing its business for the last many years in the property in question and has earned goodwill and reputation and the Courts below have not considered this aspect of the matter. Against it the argument of the learned Counsel for the landlord respondent is that the landlord has five sons and one of them has lost his voice and is also unable to move and the father has a liability of as many as four other sons and he is to settle each and every son in the business" independently of each other. It has also been argued that there are two concurrent findings of the fact in favour of the landlord that his need in respect of the property in question is genuine and bona fide and therefore, the High Court in its jurisdiction has no powers to upset those findings.

14. In support of his argument the learned Counsel for the respondent landlord has relied upon the case of Ashok Kumar and others v. Sita Ram, 2001 (43) ALR 783 (SC), in which Hon"ble Supreme Court has held that the finding of fact recorded by the Final Court of fact should not ordinarily be interfered with by the High Court in exercise of writ jurisdiction, unless the Court is satisfied that the finding is vitiated by manifest error of law or is patently perverse. The High Court should not interfere with a finding of fact simply because it feels persuaded to take a different view on the basis of material on record.

15. I have considered the argument of the learned Counsel for two sides and I find that here in the present case learned Prescribed Authority has discussed the evidence adduced before it in detail and came to the conclusion that the need of the landlord in respect of the property in question is genuine and bona fide. The Prescribed Authority has further compared the needs and hardships of the two sides and it came to the conclusion that in case the property in question is not released in favour of the landlord he will be put in greater hardship. The application under Section 21(1)(a) of the U.P. Act No. XIII of 1972 was thus allowed by the learned Prescribed Authority. The appellate Court concurred with

these findings and held that the need of the landlord in respect of the property in question is genuine and bona fide. There is thus no justification with this Court to record a different finding and impose a finding that the need of the landlord in respect of the property in question is neither genuine nor bona fide and to up set that finding there is no justification with this Court. The landlord has come with the case that one of his sons has lost his voice as a result of accident with which he met and now, the aforesaid so has become a liability on father. According to the landlord he has five sons and intends to settle all of his sons independently of each other in the business.

16. I feel that the father can rightly think in those terms and every father has a desire to settle his sons independently of each other and if the landlord in this case has expressed his desire to settle his sons in the property in question, there is nothing wrong. The tenant Sri Gandhi Ashram could not point out that the landlord has any other property in which he may get his sons settled and where the sons of the landlord may do business. Thus it cannot be said that the findings recorded by the learned two Courts below are perverse or in any way vitiated by law or fact.

17. The petition is devoid of merits and is dismissed. In the interest of justice, petitioner is however allowed six months time to vacate the premises in questions.